Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PETCO PROPERTIES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPL, MNDC, FF; CNL, MT, CNC, MNDC, PSF, LRE, OPT, LAT

Introduction

This hearing dealt with the landlords' application, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an order of possession for cause and for landlord's use of property, pursuant to section 55;
- a monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

This hearing also dealt with the tenant's first cross-application pursuant to the *Act* for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated February 19, 2018 ("2 Month Notice"), pursuant to section 49.

This hearing further dealt with the tenant's second cross-application pursuant to the Act for:

- more time to make an application to cancel the landlords' notices to end tenancy, pursuant to section 66;
- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to provide services or facilities required by law, pursuant to section 65;
- an order to suspend or set conditions on the landlords' right to enter the rental unit, pursuant to section 70;
- an Order of Possession of the rental unit, pursuant to section 54;

- authorization to change the locks to the rental unit, pursuant to section 70.

"Landlord DB," who is the caretaker of the rental building, did not attend this hearing, which lasted approximately 72 minutes. The landlord's two agents (male and female) and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Both of the landlords' agents confirmed that they had permission to speak on behalf of the landlord company named in this application at this hearing (collectively "landlords") but not on behalf of landlord DB.

Both parties were in receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant confirmed receipt of the landlords' 2 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 2 Month Notice.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's applications to correct the name of the landlord company and the spelling of the male landlord's surname. The landlords consented to these amendments during the hearing.

Preliminary Issue – Jurisdiction to hear Applications

At the outset of the hearing, the landlords stated that the rental building was transitional housing and therefore, I did not have jurisdiction to hear these applications. They submitted that the rental building had rooms with food preparation facilities that were rented to tenants, they were small rooms that were not legal suites as per the City, tenants stayed for short periods of usually less than twelve months, and the only reason tenants were staying longer lately was because of the housing shortage in the City. The landlords argued that the building has always been transitional housing and that under the provincial housing definition of "transitional" it included tenancies from thirty days to three years. They stated that the tenant did not meet the criteria for transitional housing but landlord DB allowed her to rent a room in any event against the landlord's wishes. The landlords explained that they did not offer supports or programs in order to help tenants transition to new housing facilities. The landlords maintained that they did not raise the issue of transitional housing at a previous Residential Tenancy Branch ("RTB") hearing on March 21, 2018, because they forgot. The file number for that hearing appears on the front page of this decision. They said that they only use RTB forms,

such as the 1 Month Notice and 2 Month Notice that are the subject of these current applications, as a guide and to encourage their tenants to follow and respect certain rules.

The tenant argued that her tenancy was not transitional housing as she had been residing there since December 5, 2016, when she signed a one-page written agreement with landlord DB. She said that landlord DB never told her it was transitional housing and if she had, the tenant would not have rented the unit. She stated that the landlords did not offer her any supports or programs to transition to new housing and their only attempts to have her leave was by way of the 1 Month Notice and the 2 Month Notice. She claimed that after speaking with the other tenants in the rental building, which is a house with nine rooms where she rents one room, they told her that they had resided there from four to six years, which is not transitional.

Section 4(f) of the Act provides that the *Act* does not apply to "living accommodation provided for emergency shelter or transitional housing". The *Act* does not define "transitional housing." However, it is clear from the word "transition" that the meaning indicates a temporary state between movement, from one point to another. Such housing in the present context then implies that the accommodation is temporary and time limited or an intermediate step between homeless or at risk of being homeless and being permanently housed. A key determinant of transitional housing therefore would be the length of tenancy offered by the housing provider and the provision of assistance to move to permanent housing.

In the present case, the landlords admitted that the tenant did not meet the criteria for transitional housing, but she was offered the rental unit by landlord DB, who is the landlords' agent and caretaker of the building, even if it was contrary to the landlords' wishes. Regardless of the reason, the landlords agreed that tenants were staying longer in the rental building. No support programs are offered to tenants to assist them in transitioning to new housing. The landlords used RTB forms to attempt to end the tenant's tenancy and attended a previous RTB hearing recently where the issue was not raised and both parties settled their matter in accordance with the *Act*.

Given the above analysis of transitional housing, I notified both parties at the hearing that I found that the tenant's unit was not a transitional unit within the meaning of the *Act* and therefore the dispute between the parties may be resolved through the application of the *Act*. On this basis, I proceeded with the hearing and recorded the below settlement between the parties.

Analysis

Pursuant to section 63 of the *Act,* the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute, except for the monetary claims.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time, except for the monetary claims:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on June 30, 2018, by which time the tenant and any other occupants will have vacated the rental unit;
    a. Both parties agreed that this tenancy is ending pursuant to the landlords' 2 Month Notice, dated February 19, 2018;
2. The landlords agreed that the tenant is entitled to one month's free rent compensation pursuant to section 51 of the *Act* and the landlord's 2 Month Notice on the following term:
    a. The tenant is not required to pay any rent to the landlord from June 1 to 30, 2018;
3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both parties' applications made at this hearing, except for the monetary claims.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties, except for the monetary claims. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute, except for the monetary claims.

I dismiss the landlords' application to recover the $100.00 application filing fee. A filing fee is a discretionary award issued by an Arbitrator usually after a full hearing on its merits where a party is fully successful in their application. Since both parties settled the majority of their applications and I was not required to make a decision after having a full hearing on the merits of both claims, I decline to award the filing fee to the landlords.

Both parties were unable to settle their applications for monetary orders for compensation for damage or loss under the *Act, Regulation* or tenancy agreement. Therefore, these portions are dismissed with leave to reapply.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlords **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on June 30, 2018. The tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on June 30, 2018. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords must bear the cost of the $100.00 filing fee paid for their application.

Both parties' applications for monetary orders for compensation for damage or loss under the *Act, Regulation* or tenancy agreement are dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 17, 2018

Residential Tenancy Branch